

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LEO JACKSON,

Plaintiff,

DECISION AND ORDER

08-CV-6292L

v.

MICHAEL K. CALLARI,


Defendant.

Plaintiff commenced this action against several individuals in July 2008. By order entered July 14, 2008, all defendants were dismissed from the action except defendant Michael K. Callari. Plaintiff's appeal to the United States Court of Appeals for the Second Circuit was dismissed on January 5, 2009. Defendant now moves (Dkt. #18) to dismiss the complaint for plaintiff's failure to prosecute. It appears from the amended declaration of attorney Igor Shukoff (Dkt. #21), filed in support of the motion to dismiss, that Jackson advised both United States Magistrate Judge Jonathan W. Feldman and attorney Shukoff that he would not attend the Rule 16 conference before Magistrate Judge Feldman scheduled in September, 2008, because he did not intend to prosecute the case against defendant. Circumstances surrounding Jackson's statement are set forth in the declaration of attorney Shukoff. Plaintiff has not responded to the motion to dismiss and based on the above facts, there is no reason not to grant the motion.

CONCLUSION

Defendant's motion to dismiss for lack of prosecution (Dkt. #18) is granted and the complaint is dismissed with prejudice, FED. R. CIV. P. 41(b).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 5, 2009.